



RE: LDR Variance request for CWC
Chang, Albert (ECY) to: Dave Bartus

05/27/2011 10:01 AM

History:

This message has been forwarded.

Hi Dave:

Thank you for your quick reply. I appreciate the information you've pointed out and I look forward to studying those regulations more closely. I look forward to following up with you on your concerns through the public comment period.

Thank you,

Albert C.S. Chang
Nuclear Waste Program
WA State Dept. of Ecology
3100 Port of Benton Blvd.
Richland, WA 99354
(509) 372-7929
alch461@ecy.wa.gov

-----Original Message-----

From: Bartus.Dave@epamail.epa.gov [mailto:Bartus.Dave@epamail.epa.gov]
Sent: Thursday, May 26, 2011 5:15 PM
To: Chang, Albert (ECY); Boller, Jack; Baron.Adam@epamail.epa.gov
Cc: Singleton, Deborah (ECY); Skinnarland, Ron (ECY)
Subject: RE: LDR Variance request for CWC

Thanks for your response.

The wastes identified in the May 16, 2011 treatability variance request have been designated as D006, D007, and D008. The requirements of 40 CFR 268.34, "Waste specific prohibitions - toxicity characteristic metal wastes," applies to these wastes, and reads:

| (a) Effective August 24, 1998, the following wastes are prohibited from
| land |
| disposal: the wastes specified in 40 CFR Part 261 as EPA Hazardous Waste
| numbers |
| D004-D011 that are newly identified (i.e. wastes, soil, or debris
| identified as |
| hazardous by the Toxic Characteristic Leaching Procedure but not the
| Extraction |
| Procedure), and waste, soil, or debris from mineral processing operations
| that is |
| identified as hazardous by the specifications at 40 CFR Part 261.
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| (b) Effective November 26, 1998, the following waste is prohibited from
| land |
| disposal: Slag from secondary lead smelting which exhibits the Toxicity

Characteristic due to the presence of one or more metals.

(c) Effective May 26, 2000, the following wastes are prohibited from land disposal: |
| newly identified characteristic wastes from elemental phosphorus processing; |
| radioactive wastes mixed with EPA Hazardous wastes D004-D011 that are newly identified (i.e., wastes, soil, or debris identified as hazardous by the Toxic Characteristic Leaching Procedure but not the Extraction Procedure); or mixed with |
| newly identified characteristic mineral processing wastes, soil, or debris.

(d) Between May 26, 1998 and May 26, 2000, newly identified characteristic wastes |
| from elemental phosphorus processing, radioactive waste mixed with D004-D011 wastes |
| that are newly identified (i.e., wastes, soil, or debris identified as hazardous by |
| the Toxic Characteristic Leaching Procedure but not the Extraction Procedure), or |
| mixed with newly identified characteristic mineral processing wastes, soil, or |
| debris may be disposed in a landfill or surface impoundment only if such unit is in |
| compliance with the requirements specified in §268.5(h) of this part.

(e) The requirements of paragraphs (a) and (b) of this section do not apply if: |

(1) The wastes meet the applicable treatment standards specified in subpart D of |
| this part:

(2) Persons have been granted an exemption from a prohibition pursuant to a petition |
| under §268.6, with respect to those wastes and units covered by the petition;

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|
| (3) The wastes meet the applicable alternate treatment standards
| established |
| pursuant to a petition granted under §268.44; or
|
|
|
| (4) Persons have been granted an extension to the effective date of a
| prohibition |
pursuant to §268.5, with respect to these wastes covered by the extension.

Essentially, this language establishes that a waste subject to LDR treatment standards cannot be placed in a land disposal unit unless the applicable treatment standards have been met, or the unit, for specific wastes, has received a no-migration petition. While a treatability variance could establish macroencapsulation (provided the threshold criteria of 40 CFR 268.44(h)(1) and (2) are met), the prohibition on land disposal remain. In other words, a treatability variance can NOT authorize placement in a land disposal unit prior to satisfaction of applicable LDR treatment standards.

Another key point is that a site-specific treatability variance under 40 CFR 268.44(h) is NOT an exemption from the letter of the law. It is an authority that allows an alternate treatment standard to be established that meets the statutory standard of Section 3004(m) in instances where the treatment standard promulgated by EPA cannot be achieved for a particular waste, or it is inappropriate to apply the promulgated standard. Regardless of whether a standard promulgated by EPA, or an alternate treatment standard established by Ecology through a site-specific treatability variance, a waste may NOT be placed in a land disposal unit that has not received an approved no-migration petition until the applicable treatment standards have been met.

Placement of wastes not satisfying applicable LDR treatment standards in a land disposal unit may subject DOE and/or their contractors to EPA enforcement action. I strongly encourage Ecology to provide a written response to the May 16, 2011 site-specific treatability variance request that addresses this issue as discussed above.

I will be in Richland next week (5/31-6/3), and will be happy to meet with you to further discuss these issues.

From: "Chang, Albert (ECY)" <alch461@ecy.wa.gov>
To: Dave Bartus/R10/USEPA/US@EPA
Cc: "Singleton, Deborah (ECY)" <dsin461@ECY.WA.GOV>,
"Skinnarland, Ron (ECY)" <RSKI461@ECY.WA.GOV>
Date: 05/26/2011 09:17 AM
Subject: RE: LDR Variance request for CWC

Hi Dave:

I have been assigned to work on this variance request. I'm not sure that I understand your concern - isn't the whole point of a variance that DOE seeks an exemption from the letter of the law in an instance where they feel that an alternative course of action better or equally protects human health and the environment?

I was not part of the NEIC inspections, so I would appreciate it if you could point me to the specific regulations that you are concerned about.

Thank you,

Albert C.S. Chang
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-----Original Message-----

From: Bartus.Dave@epamail.epa.gov [mailto:Bartus.Dave@epamail.epa.gov]
Sent: Friday, May 20, 2011 4:25 PM
To: Biebesheimer, Joannette (ECY); Singleton, Deborah (ECY); Skinnarland, Ron (ECY); Conaway, Kathy (ECY)
Cc: Boller, Jack; Baron.Adam@epamail.epa.gov
Subject: Re: FW: LDR Variance request for CWC

I've only briefly reviewed this request, but I note that the proposed alternate method of treatment is in-trench macroencapsulation. As with the HTGR containers observed during the recent NEIC inspection, this proposal will result in disposal of a restricted waste in a land disposal unit prior to meeting applicable LDR treatment standards. This is NOT legal under Ecology's authorized dangerous waste program. I trust that Ecology will respond appropriately to ensure the illegality of in-trench treatment is clearly understood by Energy and their contractors. Given the discussions of this issue prior to and during the NEIC inspection, and my understanding that Ecology had informed Energy that in-trench macro-encapsulation of the HTGR wastes was not legal, I'm very surprised that Energy would even consider making this request to the Department,

I'll be happy to discuss further.

Dave

From: "Biebesheimer, Joannette (ECY)" <JBIE461@ECY.WA.GOV>
To: Dave Bartus/R10/USEPA/US@EPA
Cc: "Conaway, Kathy (ECY)" <KCON461@ECY.WA.GOV>
Date: 05/20/2011 04:00 PM
Subject: FW: LDR Variance request for CWC

FYI

-----Original Message-----

From: Peery, Valarie L. (ECY)
Sent: Friday, May 20, 2011 3:45 PM
To: Biebesheimer, Joannette (ECY)
Cc: Singleton, Deborah (ECY); Skinnarland, Ron (ECY)
Subject: LDR Variance request for CWC

Joannette-

Here is the variance request received today. I have CC'ed Ron and Deborah as well.

Valarie Peery
Library & Archive Paraprofessional 6/
Public Disclosure Coordinator
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-----Original Message-----

From: NWPLib@ecy.wa.gov [mailto:NWPLib@ecy.wa.gov]
Sent: Friday, May 20, 2011 12:32 PM
To: Peery, Valarie L. (ECY)
Subject:

This E-mail was sent from "ECYPRRCLNWLIB" (Aficio MP 4000).

Scan Date: 05.20.2011 12:31:40 (-0700)
Queries to: NWPLib@ecy.wa.gov
[attachment "20110520123140229.pdf" deleted by Dave Bartus/R10/USEPA/US]